

REMARKS/ARGUMENTS

Claims 23-31 in the case are pending, and stand rejected under 35 U.S.C. §101 as being drawn to non-statutory subject matter. Claims 23-31 are rejected under 35 U.S.C. §103(a) as being unpatentable over Deaton ('302) in view of Imbo (US 2002/0033573). Claims 23-31 are rejected under 35 U.S.C. §103(a) as being unpatentable over Imbo (US 2002/0033573) in view of Deaton ('302).

Regarding the rejection under §101, Applicant disagrees that the claimed method is non-statutory subject matter. Indeed, the examiner's Office Action fails to specifically identify the alleged "metal process" recited in base Claim 23.

Regarding the prior art cited, the Office Action likewise fails to specifically identify in the prior art each of the following features of previously new Claim 23:

(a) a method for retaining fee-based memberships at a health club providing health club services to its members;

(b) the method includes active and ongoing categorization of club members throughout their respective membership cycles into one of a plurality of member segments based on a systematic and periodic evaluation of their levels of attendance at the health club;

(c) the member segments comprising new members and established members;

(d) for new members of the health club, the method includes administering a multi-week new member communication program;

(e) during the new member communication program, new members attending the health club at least 3 times per week are identified as new member/regular users;

(f) during the new member communication program, new members attending the health club but less than 3 times per week are identified as new member/low users;

(g) during the new member communication program, new members failing to attend the health club for any single week are identified as new member/non-users;

(h) throughout the new member communication program, conducting a systematic evaluation of new member attendance to determine the new members' classification as a new member/regular user, new member/low user, and new member/non-user;

(i) based on the evaluation of new member attendance, transmitting a first customized message at least 2 times per week to each of the new member/regular users;

(j) based on the evaluation of new member attendance, transmitting a second customized message at least 2 times per week to each of the new member/low users;

(k) based on the evaluation of new member attendance, transmitting a third customized message at least 2 times per week to new member/non-users;

(l) the first, second, and third customized messages of the new member communication program communicating different content to the new users in the respective new user segments;

(m) further categorizing established members of the health club based on their level of attendance into one of regular user members, low user members, and non-user members;

(n) for regular user members of the health club, administering a regular user communication program wherein regular user members attending the health club at least 12 times per month during the regular user communication program remain in the regular user communication program;

(o) for regular user members of the health club, administering a regular user communication program wherein regular user members failing to attend the health club at least 12 times during any single month during the regular user communication program are removed from the regular user communication program, and are reclassified as low user members;

(p) throughout the regular user communication program, conducting a systematic evaluation of member attendance to evaluate the established members' classification as a regular user member;

(q) throughout the regular user communication program, transmitting customized messages to the regular user members no more than once per month;

(r) for low user members of the health club, administering a low user communication program wherein low user members attending the health club at least 12 times per month for two consecutive months during the low user communication program are reclassified as regular user members, and are placed into the regular user communication program; and wherein low user members failing to increase their attendance at the health club during the low user communication program are reclassified as non-user members;

(s) throughout the low user communication program, conducting a systematic evaluation of member attendance to evaluate the established members' classification as a low user member;

(t) throughout the low user communication program, transmitting customized messages to the low user members no more than twice per month;

(u) administering a recovery program for non-user members of the health club;

(v) throughout the recovery program, conducting a systematic evaluation of member attendance to evaluate the established members' classification as a non-user member; and

(w) throughout the recovery program, transmitting customized messages to the non-user members at least twice per week.

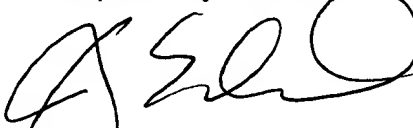
Notwithstanding the examiner's failure to address all elements recited above, base Claim 23 is amended herein to further distinguish the claimed method from the prior art cited. Specifically, amended base Claim 23 recites (i) *utilizing an existing electronic database of the health club, the health club database comprising club membership*

information including member attendance levels; (ii) periodically and not less than once per day, electronically interacting with the existing health club database to retrieve updated attendance levels for each club member; and (iii) using the updated attendance levels for each club member to perform the steps/acts (a)-(w) listed above.

For each of these newly added limitations (i)-(iii) and for features (a)-(w) above, the examiner is respectfully requested to specifically identify corresponding features in any prior art applied in his next action. *Regrettably, Applicant gains little understanding of the examiner's position on new and newly amended claims (with entirely new features) by reading the same examiner arguments from prior actions which have been cut-and-pasted into the current action.*

For all these reasons discussed above, Applicant submits that all of the claims in the case are now in condition for allowance. Such action is therefore respectfully requested at an early date. If the Examiner believes that issues remain for discussion, he is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Schwartz', written over a circular stamp or seal.

Jeffrey J. Schwartz
Attorney for Applicant
Registration No. 37,532

Jeffrey J. Schwartz
Schwartz Law Firm, P.C.
SouthPark Towers
6100 Fairview Road, Suite 1135
Charlotte, North Carolina 28210
Tel: 704-552-1889
Fax: 704-552-1866
Email: jjis@schwartz-iplaw.com